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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/024,353	12/21/2001	Daniela Giacchetti	05725.0979-00	4662
7590	10/20/2004			
FINNEGAN, HENDERSON, FARABOW GARRETT & DUNNER, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER SMITH, RUTH S	
			ART UNIT 3737	PAPER NUMBER

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/024,353	Applicant(s) GIACCHETTI ET AL.	
	Examiner Ruth S Smith	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/21/04 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Apple Corps. The claims are directly readable on Apple Corps in that the claims merely set forth a system comprising a processor. The processor disclosed by Apple Corps is considered to be capable of performing the method.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8,10,17,20,23-27,29,31-41,43,48,51,53-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand et al. Hillebrand et al discloses a method for skin imaging and analysis using simulated images which then show altered images using a cosmetic product. Hillebrand et al fails to disclose the use of a simulated image as the initial image provided. In the absence of any showing of

criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation.

Claims 1-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes, Jr. et al. Hayes Jr. et al disclose simulation of cosmetic reconstruction in real time. The method includes inputting an image into a computer. Hayes Jr. et al fails to specifically disclose how the initial image is obtained. In the absence of any showing of criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation. Furthermore, it would have been obvious to one skilled in the art to have applied any known type of cosmetic changes to the patient and it would have been obvious to one skilled in the art to have showed the facial changes in combination with images of the entire patient dressed in clothing in order to more completely assess the changes to the patient's face.

Claims 1-32,34-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massengill. Massengill discloses all of the claimed limitations except for the use of a simulated facial image. In the absence of any showing of criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment

would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation. The method of Massengill is applicable to all cosmetic areas of the body. The cosmetic product can be viewed to be the cosmetic surgical procedure. It would have been obvious to one skilled in the art to show the facial changes in combination with images of the entire patient dressed in clothing in order to more completely assess the changes to the patient's face.


### ***Response to Arguments***

Applicant's arguments with respect to claims 1-58 have been considered but are moot in view of the new ground(s) of rejection. With regard to claims 33,58, the term "configured to" is interpreted to mean "capable of" and the processor is considered to be capable of performing the functions as set forth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S Smith whose telephone number is (703) 308-3063. The examiner can normally be reached on M-F 5:30 AM- 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S Smith  
Primary Examiner  
Art Unit 3737